ERIC GRANT
United States Attorney
RACHEL DAVIDSON
Assistant United States Attorney
501 I Street, Suite 10-100
Sacramento, CA 95814
Telephone: (916) 554-2731

Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Y.T.D.,

Petitioner,

v.

TONYA ANDREWS, in her official capacity as Facility Administrator of Golden State Annex Detention Facility; MOISES BECERRA, in his official capacity as Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, San Francisco; KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; and PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

CASE NO. 1:25-cv-01100-JLT-SKO

RESPONDENTS' OPPOSTION TO PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER

Judge: Hon. Jennifer L. Thurston
Hearing: Sept. 8, 2025 at 1:30 p.m.

I. INTRODUCTION

Respondents hereby oppose the motion for a temporary restraining order in this 28 U.S.C. § 2241 habeas proceeding.[1] The petitioner is not likely to succeed on the merits of his challenge to the length of his detention because he has not met his burden of providing good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *See Zadvydas v. Davis*, 533 U.S.

[1] The Government moves to dismiss all respondents other than Tonya Andrews from this case. A habeas petitioner may only name the officer having custody of him as the respondent. 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996). Here, the petitioner's custodian is the facility administrator at the Golden State Annex located in McFarland, California, where Tonya Andrews serves as administrator. Respondents Pamela Bondi, Kristi Noem, and Moises Becerra are not proper respondents to the § 2241 habeas petition.

678, 701 (2001) (stating that, after six months of detention, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the government must respond with evidence sufficient to rebut that showing). The petitioner has been in detention only 3 ½ weeks over the presumptively reasonable detention period under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the government is actively seeking to remove him from the United States. He also has not met his burden to show likely irreparable harm and the balance of equities and public interest weigh in favor of the government.

II. BACKGROUND

Petitioner Y.T.D. is a native and citizen of Ethiopia who entered the United States illegally. Declaration of Sellenia Olson ("*Olson Decl.*"), ¶ 5; Habeas Petition ¶ 31. On July 1, 2024, the Department of Homeland Security ("DHS") served the petitioner with a Notice to Appear, charging him with inadmissibility for being present without admission or parole and without appropriate documents. *Olson Decl.* at ¶ 6; Habeas Petition ¶ 32. On January 6, 2025, an Immigration Judge granted the petitioner's application for withholding of removal, which is a type of relief that prohibits removal of an alien to his country of origin (not removal to a different country) if the noncitizen establishes that it is more likely than not that he will be subjected to persecution or torture if returned to his country of origin. Habeas Petition ¶ 1; *Johnson v. Guzman Chavez*, 594 U.S. 523, 536 (2021) ("If an immigration judge grants an application for withholding of removal, he prohibits DHS from removing an alien *to* that particular country, not *from* the United States.") (emphasis in original). DHS did not appeal the Immigration Judge's decision to the Board of Immigration Appeals, so the petitioner is subject to a final removal order. *See* 8 U.S.C. § 1231(a)(1)(B)(i); 8 C.F.R. § 1241.1(c).

III. LEGAL STANDARD

Temporary restraining orders and preliminary injunctions are governed by the same standard. *Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001). "A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). Alternatively, a plaintiff can show "serious questions going to the merits

and the balance of hardships tips sharply towards [plaintiff], as long as the second and third . . . factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

Preliminary injunctions are "never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Plaintiffs seeking a preliminary injunction bear a "heavy" burden and "difficult task in proving that they are entitled to this extraordinary relief. *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted). A preliminary injunction requires "substantial proof" and a "clear showing." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis omitted).

A court must exercise "heightened scrutiny" where a party seeks a mandatory injunction."[2] *Dahl v. HEM Pharms. Corp.* 7 F.3d 1399, 1403 (9th Cir. 1993). *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017) (explaining that mandatory injunctions are subject to a higher standard than prohibitory injunctions). If "a party seeks mandatory preliminary relief that goes well beyond maintaining the status quo *pendente lite*, courts should be extremely cautious about issuing a preliminary injunction." *Martin v. Int'l Olympic Cmte.*, 740 F.2d 670, 675 (9th Cir. 1984); *see also Cmte. of Cent. Am. Refugees v. INS*, 795 F.2d 1434, 1442 (9th Cir. 1986).

IV. DISCUSSION

A. Detention Following a Final Order of Removal

When an alien becomes subject to a final removal order, 8 U.S.C. § 1231(a)(2) provides that the government "shall" detain the alien during a 90-day removal period. 8 U.S.C. § 1231(a)(2). After the removal period ends, the government "may" detain four categories of aliens: (1) those who are inadmissible on certain specified grounds; (2) those who are removable on certain specified grounds; (3) those it determines "to be a risk to the community"; and (4) those it determines to be "unlikely to comply with the order of removal." *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578-79 (2022) (quoting 8 U.S.C. § 1231(a)(6)).

In *Arteaga-Martinez*, the Supreme Court held that 8 U.S.C. § 1231(a)(6) does not require a bond hearing before an Immigration Judge after six months of detention in which the government bears the

[2] "A mandatory injunction orders a responsible party to take action, while [a] prohibitory injunction prohibits a party from taking action and preserves the status quo pending a determination of the action on the merits." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1060-61 (9th Cir. 2014).

burden of proving by clear and convincing evidence that a noncitizen poses a flight risk or a danger to the community. *Arteaga-Martinez*, 596 U.S. at 580-81 (stating that the text of section 1231(a)(6) does not address or even hint at the requirement of a bond hearing after six months of detention). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), however, the Supreme Court held that section 1231(a)(6) "does not permit indefinite detention" and instead "limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States. *Zadvydas*, 533 U.S. at 689. The Court stated that, after six months of detention, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the government must respond with evidence sufficient to rebut that showing. *Id.* at 701. The Court was careful to note, however, that:

> "This 6–month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future."

Id. at 701.

B. The Petitioner is Not Likely to Succeed on the Merits on his Length of Detention Claim.

The petitioner is not likely to succeed on the merits on his claim challenging the length of his detention because he has not met his burden of providing good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701 (stating that, after six months of detention, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the government must respond with evidence sufficient to rebut that showing).

As an initial matter, the six-month period that the Supreme Court held in *Zadvydas* was presumptively reasonable expired a mere three-and-a-half weeks before the petitioner filed his habeas petition. The petitioner's removal order became final on February 6, 2025 (when the thirty-day period for DHS to appeal the Immigration Judge's January 6, 2025 Order granting the petitioner's application for withholding of removal expired), and the petitioner filed his habeas petition on August 29, 2025. As set forth in *Zadvydas*, an alien is not entitled to release after six months. *See Zadvydas*, 533 U.S. at 701 ("This 6–month presumption, of course, does not mean that every alien not removed must be released

after six months."). "To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

More importantly, the petitioner has provided scant evidence, if any, that there is no significant likelihood of removal in the reasonably foreseeable future. In fact, he acknowledges that DHS has informed him that, although it cannot remove him to Ethiopia, it intends to remove him to Kenya, Eritrea, Somalia or Benin. Habeas Petition ¶ 35; *Guzman Chavez*, 594 U.S at 536 (stating that, in contrast to a grant of asylum, which permits the alien to remain in the United States, a grant of withholding of removal "only bars deporting an alien to a particular country or countries.") (quoting *INS v. Aguirre-Aguirre*, 526 U.S. 415, 419 (1999)). *Padilla-Ramirez v. Bible*, 882 F.3d. 826, 832 (9th Cir. 2017) ("A grant of withholding will only inhibit the order's execution with respect to a particular country.").

The fact that the petitioner states "upon information and belief" that DHS has failed to secure acceptance of his removal to a third country cannot reasonably be found to constitute the "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" required by Zadvydas. *See e.g., Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (concluding the district court properly denied the habeas petition where there was no evidence in the record to suggest the alien's removal would not be accomplished in the foreseeable future). To the contrary, DHS is actively working with the Department of State to identify an alternate country of removal for the petitioner. *Olson Decl.* ¶ 9.

Although the Fifth Amendment entitles aliens to due process of law, the Ninth Circuit interprets the Due Process Clause "consistent with longstanding precedent recognizing that the process due aliens must account for the government's countervailing interests in immigration enforcement – considerations that do not apply to U.S. citizens." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205-06 (9th Cir. 2022). It is well-established that "Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Demore v. Kim*, 538 U.S. 510, 522 (2003). This is true because "any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government, which are core sovereign powers." *Id.* "The Supreme Court has accordingly long upheld Congress's authorization of

'detention during deportation proceedings as a constitutionally valid aspect of the deportation process.'" *Id.* at 523.

Although the petitioner states that "the *Zadvydas* Court was clear: the Government cannot merely point to good faith efforts to find third countries who would accept Y.T.D.'s removal," Habeas Petition ¶ 3 (citing *Zadvydas*, 533 U.S. at 702), *Zadvydas* does not say that. In fact, what the *Zadvydas* Court stated on the page of the opinion cited by the petitioner was simply: (1) that an alien is not required "to show the absence of any prospect of removal – no matter how unlikely or unforeseeable," and (2) that the Ninth Circuit's order directing the government to release the alien from detention was flawed because the Ninth Circuit's conclusion "may have rested solely upon the 'absence' of an 'extant or pending repatriation agreement without giving due weight to the likelihood of successful future negotiations.'" *Zadvydas*, 533 U.S. at 702.

C. The Petitioner is Not Likely to Succeed on the Merits of his APA Claim

The petitioner is not likely to succeed on the merits on his claim that the Department of Homeland Security has violated the Administrative Procedures Act ("APA") by "deviat[ing] from its own policy in continuing to detain Y.T.D. after he was granted immigration relief, without determining whether exceptional circumstances warrant his continued detention." Habeas Petition ¶ 81.

First, although a court can "compel agency action unlawfully withheld or unreasonably delayed," *see* 5 U.S.C. § 706(1), the plaintiff must show agency recalcitrance that is "in the face of clear statutory duty or is of such a magnitude that it amounts to an abdication of statutory responsibility." *ONRC Action v. Bureau of Land Mgmt.*, 150 F.3d 1132, 1137 (9th Cir. 1998) (citing *Public Citizen Health Research Group v. Comm'r, Food & Drug Admin.*, 740 F.2d 21, 32 (D.C. Cir. 1984)); *see also Audubon Soc'y of Portland v. Jewell*, 104 F. Supp. 3d 1099 (D. Or. 2015). A "failure to act" within the meaning of the APA is the failure of the agency to issue an "agency rule, order, license, sanction or relief." *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 62 (2004). "Thus, a claim under § 706(1) can proceed only where a plaintiff asserts that an agency failed to take a *discrete* agency action that it is *required to take." Id.* at 64 (emphasis in original). Here, the petitioner has not pointed to any clear statutory duty or responsibility that DHS was required to fulfill, such that APA review is available.

Second, the policy or policies the petitioner points to do not support his argument that he is

entitled to release from detention. The first memo the petitioner relies on ("Detention and Release during the Removal Period of Aliens Granted Withholding or Deferral of Removal" – a memo issued on April 21, 2000) simply provides in relevant part: "If, therefore, an alien has been finally granted withholding or deferral of removal *and the INS is not actively pursuing the alien's removal to an alternate country*, the INS has authority to consider the release of such an alien during the removal period. This means only that there is authority to consider release of such aliens; it does not mandate their release." ECF No. 40-1 (emphasis added). Here, DHS *is* actively pursuing the alien's removal to an alternate country. The second memo the petitioner relies on ("Detention Policy Where an Immigration Judge Has Granted Asylum and ICE has Appealed" – a memo issued on February 9, 2004) on its face does not apply here because it sets forth DHS's policy favoring release of aliens who have been granted relief by an immigration judge when "ICE has entered an appeal of the decision which is pending before the Board of Immigration Appeals." In other words, that memo applies to aliens who are not yet subject to a final order of removal and, therefore, are not detained under 8 U.S.C. § 1231(a)(6) as the petitioner is in this case. The third memo the petitioner relies on ("Reminder on Detention Policy Where an Immigration Judge has Granted Asylum, Withholding of Removal or CAT" – an email dated March 6, 2012) is an email from someone or something called "ERO Taskings" and only summarizes ICE's policy to "favor" release of aliens granted protection relief by Immigration Judges and says nothing about whether that policy applies where, as here, DHS is actively pursuing an alien's removal to a third country. The fourth and final memo the petitioner relies on ("A Message from Tae D. Johnson" – an email dated June 7, 2021) does not, on its face, apply to the petitioner because it governs release of aliens "pending the outcome of any DHS appeal" and does not address whether that policy applies where, as here, DHS is actively pursuing an alien's removal to a third country." This memo also appears to apply to aliens who are not yet subject to a final order of removal and, therefore, are not detained under 8 U.S.C. § 1231(a)(6) as the petitioner is in this case.

Third, the APA provides for judicial review only of agency actions "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Here, because a writ of habeas corpus provides the petitioner an adequate remedy to his detention challenge, suit under the APA is precluded. "Congress did not intend the general grant of review in the APA to duplicate existing procedures for review of

agency action," *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988). Habeas corpus, the "symbol and guardian of individual liberty," *Peyton v. Rowe*, 391 U.S. 54, 59 (1968), has long provided such a remedy, and petitioner cannot dispute that such an adequate remedy exists for him to challenge his detention here.

Finally, under the Administrative Procedure Act, the court lacks jurisdiction to review agency actions that are "committed to agency discretion by law." 5 U.S.C. § 701(a)(2). The Supreme Court has read the "committed to agency discretion" exception "quite narrowly, restricting it to those rare circumstances where the relevant statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion." *Dep't of Com. v. New York*, 588 U.S. 752, 772 (2019) (internal quotation marks and citation omitted); *see also Heckler v. Chaney*, 470 U.S. 821, 830 (1985) (This jurisdictional bar "is applicable in those rare instances where statutes are drawn in such broad terms that in a given case there is no law to apply." (internal citation marks omitted); *Probodanu v. Sessions*, 387 F. Supp.3d 1031, 1045 (C.D. Cal. 2019) ("Although the APA precludes review of agency decisions that are 'committed to agency discretion by law,' 5 U.S.C. § 701(a)(2), this bar does not extend to agency decisions when ... there are 'statutes regulations, established agency policies, or judicial decisions that provide a meaningful standard against which to assess' an agency's action." (quoting *Mendez-Gutierrez v. Ashcroft*, 340 F.3d 865, 868 (9th Cir. 2003)). Here, DHS has exercised its discretion to detain the petitioner after the presumptively six-month removal period has expired.

D. The Petitioner Is Not Likely to Succeed on his Third-Country Removal Procedure Claim

Although it is not entirely clear from the habeas petition, the petitioner appears to ask the Court to issue an advisory opinion – namely, that "if ICE intends to remove [the petitioner] to any third country without affording him the mandated due process, including the opportunity to be heard on a fear claim, that too would violate the Due Process Clause." Habeas Petition ¶ 84.

The Constitution empowers federal courts to hear actual cases and not render advisory opinions." *See United States v. Kaczynski*, F.3d 1120, 1124 (9th Cir. 2009); *see also United Pub. Workers v. Mitchell*, 330 U.S. 75, 89 (1947) ("As is well known the federal courts established pursuant to Article III of the Constitution do not render advisory opinions."). In any event, "ICE full understands that prior to any removal to an alternative country other than Ethiopia, petitioner must be provided notice, an

opportunity to claim fear, and, if fear is claimed, an opportunity to have that claim adjudicated." *Olson* Decl. ¶ 10.

E. The Petitioner Has Not Met His Burden to Show Likely Irreparable Harm

Immigration laws have long authorized immigration officials to charge aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens pending removal. *Demore*, 538 U.S. at 523-26. "Detention is necessarily a part of [the] deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952). *Freno v. Flores*, 507 U.S. 292, 306 (1993) ("Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General."). The petitioner cannot establish irreparable harm because he is being detained in order to effectuate his removal as required by 8 U.S.C. § 1231(a)(6).

F. The Balance of Equities and Public Interest[3]

"The government's interest in efficient administration of the immigration laws" is "weighty," and "it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). Further, the government's interest in protecting the public and preventing deportable non-citizens from fleeing are strong and compelling. *See e.g., Rodriguez Diaz,* 53 F.4th at 1208 (the government's interests, including the "increas[ing] the chance that, if ordered removed, the aliens will be successfully removed" are "interests of the highest order that only increase with the passage of time"). Those interests are especially compelling here.

V. CONCLUSION

For the foregoing reasons, the Court should deny the petitioner's motion for a temporary restraining order.

Dated: September 3, 2025

ERIC GRANT
United States Attorney

By: */s/ Rachel Davidson*
RACHEL DAVIDSON
Assistant United States Attorney

[3] When the government is a party, the third and fourth preliminary injunction factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014).